

COUNCIL POLICY**CURRENT**

SUBJECT: COMPLAINTS ALLEGING MISCONDUCT ON THE PART OF A CITY
EMPLOYEE OR OFFICER
POLICY NO.: 000-15
EFFECTIVE DATE: January 11, 1973

BACKGROUND:

There are existing procedures for the investigation of complaints alleging misconduct on the part of City officers and employees. A member of the City Council may request such an investigation by referring the matter to the City Manager, or to department heads of departments not under the City Manager. Section 128 of the Charter establishes a procedure for the investigation of charges of misconduct or inefficiency against any employee or officer in the classified service by the Civil Service Commission. The State Ralph M. Brown Act permits such matters to be considered by the governing board in executive session. The City Council has an obligation to assure that such complaints are thoroughly investigated to protect the public interest and the interests of the City and its employees and to provide for the appropriate investigation of specific complaints.

PURPOSE:

1. To establish a procedure assuring that complaints alleging misconduct on the part of any City employee or officer will be promptly and thoroughly investigated with the results and any subsequent actions taken reported to the official or body responsible for initiating such investigations.
2. To preclude the presentation of unsupported or unsupportable charges in public meetings and to provide that investigations of alleged employee misconduct will be conducted and discussed in confidence; provided, however, that the City Council may make an exception if it finds that the public interest served by discussing a specific complaint publicly clearly outweighs the advantages to all concerned of confidentiality.
3. This Policy shall not diminish the opportunity of any person to lodge a complaint regarding any aspect of municipal government or the performance of City employees with a member of the City Council. Neither shall this Policy limit in any way the procedures provided under Charter Section 128.
4. This Policy shall not apply to any item docketed by a Councilman.

POLICY:**A. Council Docket**

1. The City Clerk shall refrain from listing on the Council Docket any communication which alleges misconduct on the part of any City employee or officer unless both of the following conditions have been met:
 - a) the person wishing to address the Council has exhausted his administrative remedies--that is, lodged the complaint with the City Manager or the department head

of a department independent of the City Manager, and has received a response from the Manager or independent department, and

- b) unless the Clerk is so instructed by a member of the Council in accordance with this Policy under A-5.

In the event the person making the administrative complaint does not receive a response within 15 days, this shall be considered as a response not satisfactory to the person lodging the complaint.

2. In the case where all administrative remedies as outlined above have been exhausted, the person wishing to bring the matter to the attention of the City Council shall be encouraged to submit the complaint in writing to a member or members of the Council for appropriate follow-up action.
3. If he still wishes to address the Council, he shall file with the City Clerk a statement which shall be limited to the following: "I wish to address the City Council in regard to a complaint of alleged misconduct on the part of a City employee or officer."
4. In addition, he shall file with the office of the City Council, at the same time, a confidential statement consisting of a written summary of his complaint together with an explanation of his reasons for being dissatisfied with the administrative review which was carried out in accordance with this Policy. This statement shall be distributed to members of the City Council.
5. If so directed by any member of the Council, the Clerk shall list the communication. Such items shall not be taken up under "unanimous consent."
6. The Council may elect at the time set for the communication either to take the matter up in executive session or to refer it to the City Manager, a non-managerial department, the Civil Service Commission, another agency, or an ad hoc committee for further investigation with a report back at a specified time. The Council shall not permit a public presentation or discussion without first adjourning to executive session to consider whether public discussion is appropriate.

B. Investigations

1. Complaints lodged with the City Council alleging misconduct on the part of any City employee or officer shall be referred to the City Manager or, in the case of departments independent of the City Manager, to the appropriate department head.
2. If the complaint appears to involve litigation or potential litigation, or current or potential criminal proceedings, the City Manager or independent department head shall be responsible for notifying the City Attorney and/or the City Claims Office. Claims are to be handled in accordance with Council Policy 000-09.

3. Independent department heads to whom such a complaint is referred shall cause it to be investigated and shall report the results to the City Council in accordance with Section C of this Policy. Upon request of the department head conducting such an investigation, other departments of the City shall cooperate in the investigation and make appropriate staff available.
4. In the case of managerial departments, the City Manager shall assign the complaint to the appropriate officer or department for investigation. Upon request of the officer or department conducting the investigation, or upon the request of the City Manager, other departments of the City shall cooperate in the investigation and make appropriate staff available.
5. The City Manager shall review the results of the investigation and submit a report to the City Council in accordance with Section C of this Policy, unless he determines that additional investigation by his office is deemed necessary. If so, he shall perform the additional investigation and submit a report to the Council in accordance with Section C.
6. The City Council may direct the City Manager to conduct an independent investigation of a complaint as covered above if a majority of the Council is dissatisfied with the investigation conducted by the Manager, department or officer to which it was assigned.

C. Reporting

1. The City Manager or department head of a department independent of the City Manager may submit a written report to the Council on the result of an investigation as described above.
2. However, when any such complaint involves current or potential litigation, or the clear possibility of same, or current or potential criminal proceedings, or the clear possibility of same, or when the City Manager or independent department head determines that the public interest in an open discussion is outweighed by the advantages of confidentiality, an executive session may be requested for the discussion of the investigation and conclusion. The advice of the City Attorney should be requested in this regard.

HISTORY:

Adopted by Resolution R-207182 01/11/1973